

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION  
STATE OF FLORIDA

INQUIRY CONCERNING A  
JUDGE: CYNTHIA A. HOLLOWAY  
NO.: 00-143

Florida Supreme Court  
Case No.: SC00-2226

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**JUDICIAL QUALIFICATIONS COMMISSION'S RESPONSE**  
**IN OPPOSITION TO RESPONDENT HOLLOWAY'S**  
**MOTION FOR SUMMARY JUDGMENT**

COMES NOW the Florida Judicial Qualifications Commission (hereinafter referred to as the JQC), by and through the undersigned Special Counsel, and hereby files its response in opposition to Judge Cynthia A. Holloway's Motion for Summary Judgment and as grounds states as follows:

**INTRODUCTION**

Judge Holloway's Motion for Summary Judgment alleging that there are no issues of material fact in dispute concerning charges 1 (a) (b), 3, 4, 5, 6 and 7 is absolutely without merit and is yet another example of Judge Holloway's refusal to recognize and accept a pattern of behavior that when viewed in its totality, shows repeated incomplete, misleading testimony and a pervasive habit of lending the prestige her judicial office to advance the causes of family and friends.

The JQC investigation, which ultimately led to the filing of the present charges, was preliminarily based on Judge Holloway's involvement in the child custody lawsuit between Robin Adair and Mark Johnson. The *Adair v. Johnson* matter was an emotionally charged custody case wherein multiple allegations of sexual abuse were made against the child's father which were investigated on three separate

occasions by three Tampa Police Department detectives.

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Charges 1(a) and (b) pertain to Judge Holloway's telephone contact with Tampa Police Detective John Yaratch wherein she attempted to influence the course of his investigation. Charges 1(c) and 2 correspond with Judge Holloway's *ex parte* communication with Judge Ralph Stoddard, the presiding judge in *Adair v. Johnson*, wherein Judge Holloway in sum, entered Judge Stoddard's hearing room and in an angry manner, shook her finger at the Judge, criticized the time it took her friend to get a hearing date and crudely implied that Mark Johnson's attorney had an improper hold on Judge Stoddard and must have "pictures (of Judge Stoddard) and a dog..." Judge Holloway's *ex parte* communication with Judge Stoddard caused Judge Stoddard to recuse himself while the subject child who was a mere 4 years old, was in temporary shelter status. As a result, the child remained in shelter status away from her mother and father five weeks longer than necessary while the new Judge was assigned and became familiar with the case. (Mark Johnson deposition dated May 10, 2001, pp. 26-27.)(Exhibit 1.) Judge Holloway has not moved for Summary Judgment concerning the allegations related to her *ex parte* contact with Judge Stoddard. Charges 3, 4 and 5 pertain to false, misleading and incomplete testimony given by Judge Holloway during her

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<sup>1</sup> In fairness to the collateral parties involved in this case, we should note that all police investigations concerning the alleged abuse were closed without arrest.

deposition in the *Adair v. Johnson* case. Charges 6 and 7 relate to Judge Holloway's use of her judicial office to assist a friend and her brother.

**Judge Holloway Provides Misleading Testimony During 6(b) Hearing**

Robin Adair is the sister of Judge Holloway's best friend of over fourteen years, Cynthia Tigert. (Cynthia Tigert deposition, dated August 23, 2001, pp. 9, 10; Judge Holloway deposition, dated May 8, 2001, pp. 17-18.)(Exhibits 2 and 3.) In August 1995 while living in California, Robin Adair gave birth to a daughter, hereinafter referred to as "P.A.", who was the subject of the custody dispute in *Adair v. Johnson*. In an apparent attempt to minimize her involvement in the eyes of the Investigative Panel, Judge Holloway testified during the 6(b) hearing of October 13, 2000, that she stayed out of the custody battle for two and a half years prior to the *ex parte* incident in Judge Stoddard's chambers which she claims was precipitated by her emotions over P.A. being placed in shelter status. (T. p. 6)(Exhibit 4.) A careful review of the records including deposition and hearing transcripts in the *Adair v. Johnson* case demonstrates that Judge Holloway's testimony at the 6(b) hearing is not true. Judge Holloway in fact testified as a witness in favor of Robin Adair on two separate occasions prior to the *ex parte* incident with Judge Stoddard. In addition, Judge Holloway telephoned Detective Yaratch in an attempt to influence him prior to the *ex parte* incident involving Judge Stoddard. Thirdly, Detective Donna Keen, who was assigned to investigate the second allegation of abuse, testified in a deposition in *Adair v. Johnson* that a representative from Judge Holloway's office

telephoned her at the police station. (Detective Donna Keen deposition dated, August 31, 2000 p.8.)(Exhibit 5.) Detective Keen was not able to recall the substance of the conversation she allegedly had with Judge Holloway's office worker nor did she return Judge Holloway's telephone call.<sup>2</sup> However, the alleged telephone call from Judge Holloway's office also took place before the ex parte incident involving Judge Stoddard.

### **Judge Holloway Provides Misleading Testimony to Help Her Friend**

Not only was Judge Holloway personally involved in the *Adair v. Johnson* case, her testimony demonstrates an obvious bias in favor of Robin Adair and a clear attempt to bolster a virtually non-existent relationship with Robin Adair in order to help her best friend's sister. For example, on November 18, 1998, Judge Holloway testified before Judge Stoddard, as a character witness in support of Robin Adair who, according to Ms. Tigert, "...was having trouble in the custody case..." Ms. Tigert testified in a recent deposition before the undersigned that she was afraid the Department of Children and Families might take P.A., so Judge Holloway, who "has good character and is well known," was subpoenaed to testify on behalf of Robin. (Cynthia Tigert deposition dated August 23, 2001, pp. 39.) During the hearing, Judge Holloway testified under oath that she knew P.A. "since she was born." (Transcript of Judge Holloway's testimony, dated November 18, 1998, p. 3) However, P.A. was

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<sup>2</sup> Both Judge Holloway and her current Judicial Assistant Janice Wingate deny any contact or attempt to contact Detective Keen. The undersigned did not pursue this incident due to Detective Keen's limited recollection of the telephone call.

born in California on August 22, 1995 and lived there until May 1996 when she moved to Tampa with her mother. (Deposition of Robin Adair, dated, August 23, 2001, p. 14 (Exhibit 6) and Deposition of Cynthia Tigert, dated August 23, 2001, p. 8.) Judge Holloway had absolutely no contact with P.A. until she was approximately 10 months old. Judge Holloway did not visit Robin Adair while she resided in California, did not speak to her on the telephone or acknowledge the birth of the child in anyway. (Judge Holloway deposition dated May 8, 2001, pp. 24-27) When asked “how frequently she had contact with P.A. within the presence of her mother... and without the presence of her mother...?” Judge Holloway responded “I probably see P.A. once every week-and-a-half, at least, I would say. I mean, P.A. lives in a house directly behind my very best friends (Cynthia and Bruce Tigert) and I’m over there and my children are over there and I see her quite frequently. (Transcript of Judge Holloway’s testimony, dated November 18, 1998, p. 5.) Judge Holloway never answered the question regarding her contact with Robin Adair because, as later testimony will reveal, Judge Holloway’s relationship with Robin Adair was incidental to her true friendship with Robin Adair sister.

In an apparent similar attempt to bolster her relationship with Robin Adair, Judge Holloway testified during a deposition in the *Adair v. Johnson* matter that she has known Robin Adair “since 1978 or ’79” and that the two women met in Gainesville. (Deposition of Judge Holloway dated July 19, 2000, p. 4.)

In stark contrast, during her deposition taken regarding the JQC inquiry, when

distance from Robin Adair and the volatile custody case was favored, Judge Holloway acknowledged simply meeting Robin Adair at a party while attending school in Gainesville. (Deposition of Judge Holloway, dated May 8, 2001, pp. 19-20) She further admitted not having a friendship or a relationship with Robin Adair in Tampa either, as evidenced by the following questions and answers asked by the undersigned:

Q: Did there come a time in Tampa where you became friendly and you had a friendship with Robin Adair?

A: I don't know how to answer the question. She's the sister of one of my closest friends. I don't really have necessarily a relationship with Robin. My relationship was with Cindy (Tigert) and she happens to be one of Cindy's relatives, so that's my connection to Robin. I don't have a relationship with Robin outside of my friendship with Bruce and Cindy (Tigert).

(Deposition of Judge Holloway, dated May 8, 2001, p. 21.)

In a like manner, Robin Adair recently testified she only saw Judge Holloway approximately two or three times a year but claims she saw Judge Holloway's children on their frequent visits to Cindy Tigert's house. (Robin Adair Deposition dated August 23, 2001, pp. 15-16.) Furthermore, when asked "Did there come a time after you were already in Tampa that your relationship got stronger or more involved with Cynthia Holloway?" Robin Adair replied, "No."

Arguably, based on the testimony offered during the JQC inquiry, Judge Holloway testified as a character witness for Robin Adair because, as Cynthia Tigert claims, her sister was "having trouble with the custody case" and they hoped to

capitalize on Judge Holloway's credibility as a Circuit Court Judge.

**Judge Holloway Attempts to Influence Detective John Yaratch  
(Charge 1(a) and (b))**

On February 23, 2000, Detective John Yaratch was assigned to investigate a complaint of possible sexual abuse reported by a schoolteacher at an area school where P.A. was being interviewed for possible admission. It is undisputed that Judge Holloway telephoned Detective Yaratch on February 24, 2000.<sup>3</sup> However, the substance and intent of the telephone call is highly in dispute. According to Judge Holloway's Motion for Summary Judgment, she telephoned Detective Yaratch as a family friend to merely relay a concern or suggestion about an investigation and that she should not be stripped of her right to have contact with law enforcement merely because she holds the office of a circuit court Judge. In support of this position, Judge Holloway relies on the *Inquiry Concerning Judge McMillian, Findings, Conclusions and Recommendations by the Hearing Panel of the Judicial Qualifications Commission*, pp 20-22.

In *McMillian*, the JQC and Supreme Court concluded there was clear and convincing evidence to remove Judge McMillian based upon cumulative misconduct.

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<sup>3</sup> Judge Holloway's cellular telephone records corroborate Detective Yaratch's claim that she telephoned him on February 24, 2000.

One charge against Judge McMillian centered on his false assertions that incumbent County Judge George Brown pressured law enforcement officers for preferential treatment for his own children when they were arrested. The panel concluded that Judge McMillian's assertions were false misrepresentations as none of Judge Brown's children had been arrested. The Judge Brown incident is distinguishable from Judge Holloway's conduct in the present case. The Brown matter involved an isolated incident where one officer responded to Judge Brown's neighbor's house reference people fighting or engaged in a prank in the Brown home. The uniform officer who responded to the scene and allegedly interviewed the neighbor but failed to interview Judge Brown or the children involved. The officer testified that Judge Brown called to inquire why nobody at his home had been interviewed. The officer further claimed that although Judge Brown "spoke in a demeaning tone..." he "never actually sought preferential treatment." *Id.* at 22-23.

Judge Holloway's telephone call to Detective Yaratch is clearly distinguishable from the Brown matter because in Brown, the incident involved a neighbor complaining to the police about an isolated incident where Judge Brown simply called the responding officer to ask him/her a question directly related to his son. In contrast, Judge Holloway telephoned the lead Detective in a serious child sexual abuse investigation to specifically seek preferential treatment. Judge Holloway directed the Detective to have the child examined at the CAC center, without taking into consideration the wishes of Mark Johnson. At the time she placed the call to



Detective Yaratch, Judge Holloway had testified as a witness in favor of Robin Adair two times and would soon *ex parte* the sitting Judge to get her friend a hearing date. Judge Holloway's conduct was in clear conflict with a Judge's duty to avoid unfair advantage to one party in litigation over another, avoid the appearance of impropriety and damage the perception of fairness.

According to Judge Holloway's Answer and Defenses to the Amended Formal Charges, Judge Holloway claims she called Detective Yaratch to request that "if an interview had to be done with the child... that it be done as soon as possible." Judge Holloway further claims she was "simply concerned that the facts were growing stale and asked that Detective Yaratch please not let this slip through the cracks."

According to Detective John Yaratch, Judge Holloway telephoned him and affirmatively requested that he "conduct a CAC (Child Advocacy Center) interview of the child as soon as possible." Judge Holloway told the detective that "she had no interest in this case other than knowing the mother of the child" and when asked, denied "prior personal knowledge of any incidents or having witnessed any statements or actions that had caused her concern." (Detective John Yaratch *Adair v. Johnson* deposition dated, August 4, 2000, p 18; JQC deposition dated May 10, 2001, p. 128.)(Exhibit 7 and Exhibit 8.) She also attempted to influence Detective Yaratch by advising him about the altercation she had with Mark Johnson at a nightclub on Harbor Island called Jacksons." *Id.* Detective Yaratch documented the conversation in his police report. He further claims that Judge Holloway advised him

she was going on vacation and requested to be kept informed of the outcome of the CAC interview. Detective Yaratch claims he telephoned Judge Holloway a second time at her request to be kept informed, on or near March 3, 2000 and advised Judge Holloway that the CAC interview had been conducted. *Id* at 23. Detective Yaratch viewed Judge Holloway's telephone call to him requesting the CAC interview "troubling", "inappropriate" and a clear "attempt to influence" him by virtue of her position as a Judge. *Id* at 19-20.

In *In Re Frank*, 753 So.2d 1228 (Fla. 2000), cited by Judge Holloway, the Florida Supreme Court acknowledged that a judge does not abuse his/her power merely because others are aware that he/she hold that position. In pertinent part, the Court held the following:

...The gravamen of the charge under the circumstances requires that there be some affirmative expectation or utilization of position to accomplish that which would not have occurred."

Clearly, Judge Holloway's behavior falls under this category. She specifically called Detective Yaratch to accomplish the CAC interview of P.A.

During her telephone call to Detective Yaratch, Judge Holloway did not inform the Detective that she had testified as a witness in the case on two separate occasions or inform him that she had allegedly witnessed inappropriate behavior on the part of P.A., information the Detective had specifically requested and which perhaps could have shed additional light on investigation. Judge Holloway has demonstrated her desire to have the child interviewed at the CAC on several occasions. Judge

Holloway offered the following testimony during the November 18, 1998 hearing before Judge Stoddard:

Q. Have you ever discussed with Miss Adair, [P.A.'s] going to CAC for an interview or evaluation?

A. Yes.

Q. And how recently did you have a conversation with Miss Adair?

A. Probably in the last thirty days.

Q. And did you make a recommendation or suggestion to Robin Adair about P.A. going to CAC?

A. Absolutely, I did.

Q. What did Miss Adair tell you that caused you to believe that CAC - - the CAC interview would be appropriate?

A. My opinion was not only based on the conversations with Robin Adair. It has been based on actions of the child and other comments by family members, observing actions of the child.

THE COURT: What were the actions that were observed and behaviors that were observed to the best of your recollection?

A. ...P.A. does things to herself that I don't think are necessarily appropriate contact that my children certainly never have...

(Judge Holloway hearing testimony dated November 18, 1998, pp. 6-8)(Exhibit 9.)

As further evidence to support Detective Yaratch's claim that Judge Holloway directed him to have the child examined at the CAC, Robin Adair recently testified that Judge Holloway wanted P.A. interviewed at the CAC center during Detective

Keen's 1998 investigation as well.<sup>4</sup> (Robin Adair's deposition, dated August 23, 2001, p. 23.)

Detective Yaratch denies Judge Holloway's claim that she voiced concerns regarding the case getting stale. (Detective John Yaratch deposition dated, May 10, 2001, p. 128.) Furthermore, Judge Holloway's explanation offered in her Answer for her telephone call to Detective Yaratch, that she feared the case was getting stale, does not make sense: Detective Yaratch was assigned the case on February 23, 2000 and therefore the case was only one day old on February 24th, the day Judge Holloway contacted Detective Yaratch.

**Judge Holloway Provides False and Misleading Testimony in her JQC  
Deposition Regarding the Child Advocacy Center**

During Judge Holloway's deposition in to the present matter, the undersigned asked Judge Holloway the following questions regarding her knowledge of the CAC:

Q: Tell me if you can answer this question, ... In 1998, when you testified before Judge Stoddard, did you have a working knowledge of what the CAC center was?

A: No.

Q: Do you recall having a conversation with Robin Adair wherein you recommended or advised her to have a CAC interview, have the child seen at the CAC center?

A: I just don't recall. I know they do interviews there. I just don't recall.

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<sup>4</sup>This fact corroborates Detective Keen's claim that someone from Judge Holloway's office called her while she was investigating alleged incidents of abuse against P.A.

Q. Do you recall now having a desire or an opinion regarding whether or not [P.A.] should have had a CAC interview back in 1998?

A. I just don't recall. I was probably aware that the center was there. I may have told Robin that the center was there. But I have no idea how interviews get done at the CAC ...

Q. Do you know what benefit [P.A.] could have had from a CAC interview?

A. No.

Q. Would you have recommended that P.A. have a CAC interview to Robin? Is that something you would have done?

A. Again, if I had been aware of the CAC at that time, I wouldn't have known how to get an interview done there, other than to tell her that maybe her psychologist could possibly get that done, or that she should talk to her psychologist about doing that. But not knowing the CAC, or how it's run, or exactly what takes place there, I don't think I could have given her any details about it.

Although Judge Holloway is not charged with the inconsistencies surrounding this testimony, her claim of ignorance surrounding the CAC center in light of her testimony before Judge Stoddard, Robin Adair's claim that Judge Holloway recommended a CAC interview and the call to Detective Yaratch to have the child interviewed by the CAC center is astonishing to say the least. Her deposition testimony demonstrates a desire to distance herself from the *Adair v. Johnson* case in light of the JQC Inquiry and represents another example of false, misleading or inconsistent testimony.

**Judge Holloway Provides False and Misleading Deposition Testimony in Her Deposition in the *Adair v. Johnson* Case (Charges 3, 4 and 5)**

On July 19, 2000, Judge Holloway was deposed in the *Adair v. Johnson* matter by Mark Johnson acting *pro se*. Also present at the deposition were Judge Holloway's two attorney's Mr. C. Todd Alley, Judge Holloway's husband and Mr. James Holloway, Judge Holloway's brother. Robin Adair was present as the Petitioner, represented by her attorney Mr. Ray Brooks.

Prior to scheduling the deposition, Judge Holloway claims that two witnesses interviewed by the JQC's investigator informed her that the JQC was investigating an incident in her courtroom involving Dr. Sylvia Carra, a psychologist in the *Adair v. Johnson* matter.<sup>5</sup> According to Judge Holloway and Mr. Alley, news of the JQC's investigation caused them concern as Judge Holloway was up for re-election and they did not want the media to find out. Consequently they delayed the scheduling the deposition until after the re-election qualifying deadline passed. (Judge Holloway deposition dated May 8, 2001, pp. 153-154.) In her Answer to the Formal Charges and the Motion for Summary Judgment, Judge Holloway claims her incomplete testimony concerning her conversations with Detective Yaratch was caused by forgetfulness and that her failure to mention the *ex parte* incident with Judge Stoddard was omitted in part because the questions were irrelevant and outside the scope of what her attorneys instructed her to answer. However, the following testimony offered to the undersigned by Judge Holloway's husband C. Todd Alley

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<sup>5</sup>JQC investigator Robert Butler had in fact questioned numerous witnesses regarding the Dr. Carra incident in June 2000. The JQC did not file formal charges regarding the alleged incident for lack of clear and convincing evidence of misconduct.

clearly evidences their predisposition to avoid any potentially harmful testimony during the July 19, 2000 deposition:

Q. ...How was the deposition date scheduled for Judge Holloway, were there any factors that you had to consider prior to the scheduling of her deposition?

A. By the time that he (Mark Johnson) called, we were aware of the JQC investigation. Two of the people that the JQC had interviewed had come to me and told me what they had been interviewed for. Having had the threats by Mr. Johnson, it was my assumption, and I gather now it's correct, that Mr. Johnson was the source of the complaint with the JQC, that we assume that. You asked me - -

Q. You answered my question.

A. No, I haven't, because you were asking me what factors went into our scheduling it.

Q. You're right.

A. My wife was getting ready to go up for re-election. With everything that had been going on in the press with judges, it was our desire not to have him use that as another tool to get my wife, and get his revenge that he was seeking, and so we put it (the deposition) off as long as we could to get it past qualifying her, because we didn't want him to take the deposition, immediately going to the JQC with it, and then have the JQC leak the story that she was being investigated, and have that come out, and then have some last minute person file against by wife.

Q. Was there something that was going to come up in the deposition that you suspected or feared would harm your wife's chances at re-election?

A. I didn't want to take any chances.... There was no reason to take any chances at that point. We didn't want to have a contested race. There was no chance she was going to have a contested race unless something like this happened. And so why do that....

(C. Todd Alley deposition dated May 9, 2001, pp. 35-37.)(Exhibit 10.)

Judge Holloway's claim that she did not remember her brief conversation with Detective Yaratch because she had given the deposition under emotional duress after attending Judge Harry Lee Coe's funeral and that her Judicial Assistant refreshed her memory after the deposition is not credible in light of the questions asked by Mark Johnson. Judge Holloway had a professional relationship with the late Judge Harry Lee Coe. She did not speak to him on a daily or even monthly basis and only saw him in his capacity as the State Attorney. (Judge Holloway deposition dated May 8, 2001, p.161-162.) Therefore, her attendance at his funeral, although probably a sad event, should not have been traumatic enough to cause memory failure to the extent claimed by Judge Holloway. Further, if she was truly not mentally able to give a deposition Judge Holloway as an attorney or her two lawyers should have suspended the deposition. Mark Johnson's deposition questions specifically ask Judge Holloway if she contacted Detective Yaratch and whether she asked Detective Yaratch to submit the child to a CAC interview. These questions alone should have been enough to trigger Judge Holloway's recollection about her conversations with the Detective without the need to have her memory refreshed by her Judicial Assistant who did not take part in the subject conversation with Detective Yaratch.

[Questions asked by Mark Johnson]

Q. Have you or anyone in your office ever contacted law enforcement about his case?

A. Yes.



Q. Who and when, if you can recall?

A. I think just to determine who was going to investigate the most recent allegation, just to find out the name of the detective attached to the file.

Q. Did you ever speak to the detective?

A. I've spoken to the detective a lot, but not necessarily about this case. I don't really recall whether I spoke to him directly or not. I don't believe that I did.

Q. You think it's possible that you did?

A. Anything is possible.

Q. Are you aware that Detective John Yaratch has told me and Ron Russo that you called him, that you called him about this case?

A. No.

Q. And that you lobbied him to have P.A. submitted to another CAC interview?

A. No.

Q. Are you saying you didn't do it?

A. I'm certainly not saying I lobbied Detective Yaratch to do anything.

(Judge Holloway deposition dated July 19, 2000, pp. 35-36)(Exhibit 11.)

The subject errata sheet states:

This deposition was taken after I had spent three hours at the funeral of Harry Lee Coe. Upon further reflection, I do recall a brief telephone conversation with Detective Yaratch. During this conversation, informed Detective Yaratch that I did not want to discuss the facts of this investigation but hoped that the investigation would be handled in a timely fashion.

It fails to mention Judge Holloway's request that the child be examined by the CAC center, as referenced in her Formal Answer to these charges. The errata sheet also fails to include the full substance of her conversation with Detective Yaratch including her comments to him regarding the incident involving Mark Johnson at the Harbor Island restaurant and bar. What's more, the errata sheet was not sent to the court reporter until August 8, 2000, four days after Detective Yaratch's deposition and after Robin Adair's attorney Ray Brooks called C. Todd Alley to advise him that "...Detective Yaratch had referenced a telephone conversation that Cindy (Holloway) had not mentioned." (C. Todd Alley deposition dated May 9, 2001, p. 63.) Mr. Alley claims the errata sheet was already drafted but that he had not completed it due to procrastination. *Id* at 64. The claim that Mr. Alley would procrastinate correcting his wife's deposition testimony is not credible in light of the great pains taken to protect her both before and during the subject deposition.

Judge Holloway claims summary judgment should be granted regarding charge 5 which alleges her failure to fully and truthfully answer questions regarding her *ex parte* contact with Ralph Stoddard, because her errata sheet explains that she thought Mark Johnson's questions related to her conduct on a different date. Even when the deposition and errata sheet are considered together, the errata sheet fails to answer Mark Johnson's question regarding Judge Holloway's *ex parte* contact with Judge Stoddard. In her Motion for Summary Judgment Judge Holloway claims that "an understandable memory lapse, that was later corrected and confusion concerning the

scope of a question can not reasonably be construed as intentional misrepresentation.” We respectfully disagree with Judge Holloway’s claim that her alleged memory lapse was understandable or that the subject questions were confusing. The failure to answer relevant questions and her incomplete errata sheet are consistent with Judge Holloway’s desire avoid negative publicity and prevent the JQC from finding out about her attempt to influence Detective Yaratch and her *ex parte* communication with Judge Stoddard.

When considered as a whole, the acts alleged against Judge Holloway concerning her involvement in the *Adair v. Johnson* matter evidence a clear pattern of conduct where she bolstered testimony, and tried to influence both the lead detective and the presiding judge, in an attempt to gain an advantage in the pending litigation for her best friend’s sister.

**Judge Holloway Lent the Prestige of Her Judicial Office to Advance the  
Interests of a Personal Friend  
(Charge 6)**

Judge Holloway claims she did not act improperly by signing an injunction against the City of Tampa and Sonny’s Tree Service to prevent the removal of trees in front of her friend Jeanne Tate’s law firm. (Exhibit 12.) The evidence is undisputed that Ms. Jeanne Tate and Judge Holloway are friends and have known each other for approximately twenty years. They attended the same law school and were both employed at the Shackleford, Farrior law firm. (Judge Holloway’s Motion for Summary Judgment p. 16.) Ms. Tate felt comfortable enough to contact Judge

Holloway on a Saturday afternoon after her alleged attempts to contact the Chief Judge failed. Ms. Tate presumably contacted Judge Holloway on her personal cellular phone or at her home on Davis Island as explained in Judge Holloway's Motion for Summary Judgment.

Although on its face, Judge Holloway's actions may appear benign and justified, when viewed in the context of Judge Holloway's practice of lending the prestige of her office to assist family and friends, Judge Holloway's behavior in assisting Ms. Tate must be viewed as overreaching and improper. Similarly in *Inquiry Concerning A Judge, Gary G. Graham*, 620 So.2d 1273 (Fla. 1993) the Supreme Court held that:

"Standing alone, each individual charge ... might not warrant the extreme disciplinary measure of removal. Conduct unbecoming a member of the judiciary may be proved by evidence of specific major incidents which indicate such conduct, or it may also be proved by evidence of an accumulation of small and ostensibly innocuous incidents which, when considered together, emerge as a pattern of hostile conduct unbecoming a member of the judiciary."

The Court further held that:

"Graham's cumulative conduct over a period of time and the totality of the circumstances compel us to consider extreme remedial action." *Id.*

Notably, Judge Holloway did not merely agree to sign an emergency injunction presented to her by Ms. Tate but instead Judge Holloway drove to the scene of the incident in her car and personally confronted the tree cutter requesting that he produce a permit. (Judge Holloway's Motion for Summary Judgment p. 16.) When

the tree cutter failed to produce a permit, Ms. Tate claims she prepared an injunction which Judge Holloway reviewed and signed. (Affidavit of Jeanne Tate, dated May 31, 2001, p.3) Judge Holloway then telephoned the Tampa Police Department who dispatched a uniform police officer to assist Judge Holloway in serving the injunction. The JQC has obtained un-sworn testimony from responding officer Keith Elkington that Judge Holloway was “visibly upset” upon his arrival because the “tree cutter was not listening to her.” In addition, the JQC has obtained un-sworn testimony from the owner of the historic house being relocated, Randy Emmerman. Mr. Emmerman claims he was called to the scene by the tree cutter, and witnessed Judge Holloway tell the uniform officer a statement consistent with “I’m Judge Holloway, if the man starts the chainsaw take him to jail.” Mr. Emmerman was subsequently asked to pay the City of Tampa Parks Department \$5000 to cover the costs associated with re-landscaping the affected property. Mr. Emmerman claims that Judge Holloway telephoned him on Monday, July 12, 1999 and stated, “If \$5000 is not in the public parks hands by 5 p.m. you will be in my courtroom in front of me.”<sup>6</sup> This behavior is clearly improper and demonstrative of an abuse of her power.

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<sup>6</sup> The undersigned coincidentally learned of the present Motion for Summary Judgment and companion Motion to Dismiss at approximately 5:00 p.m. on Friday, September 7, 2001 after telephoning Mr. John Beranek, Esq., regarding a procedural matter. Mr. Beranek advised that Judge Jorgenson had received the Motions by overnight delivery. The undersigned requested a fax copy from Mr. Tozian’s office and noted the certificate of service indicated the undersigned’s copies had been sent via regular mail. Due to the acts of terrorism which occurred on Tuesday, September 11, 2001, the closing of the undersigned’s building and numerous bomb threats and building evacuations which followed throughout the week, the undersigned was not

The Supreme Court has often pointed out that judges should be held to a higher ethical standard than lawyers by virtue of their position in the judiciary and the impact of their conduct on public confidence in an impartial justice system. *See In re Boyd*, 308 So.2d 13, 21 (Fla. 1975). The more prudent course of action, assuming Ms. Tate truly was not able to reach the Chief Judge or the on-call Judge, was to take the injunction to Judge Holloway for her signature and return to the scene to deal with the matter herself. Or in the alternative, have Judge Holloway sign the injunction from her car without getting personally involved. The vision of Judge Holloway, Injunction in hand, arguing with a tree cutter wielding a chainsaw is not a picture that reinforces the public confidence in an impartial justice system.

**Judge Holloway Lent the Prestige of Her Judicial Office to Advance the  
Interests of Her Brother James Holloway  
(Charge 7)**

On July 29, 1999, James T. Holloway, Esquire, Judge Holloway's brother, was scheduled to appear before Judge Katherine G. Essrig for the final hearing in his uncontested divorce. Prior to appearing in person, James Holloway called Judge Essrig's chambers and "made a point of saying he was Judge Holloway's brother when he set the hearing." (Judge Essrig deposition dated August 23, 2001, p. 25.)(Exhibit 13.) Judge Essrig claims she exited her hearing room to bring a file to

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able to secure sworn testimony or affidavits from Officer Elkington and Mr. Emmerman.

her Judicial Assistant when she saw Judge Holloway in the office surrounded by numerous people waiting for their cases to be called. *Id* at 31- 32. According to Judge Essrig, Judge Holloway called her by name and stated something to the effect of: “Katherine, can’t you get my brother’s case called up? Or, can’t you call him out of order? He’s got to get to the airport?” Judge Essrig claims she did not respond, yet Judge Holloway continued talking, “... in a sort of a, not annoyed exactly, but with a tone like, ‘Come on, you know, don’t be unreasonable’ ... something along the lines of, ‘and besides, they’ve worked everything out.’” *Id* at 35. Judge Essrig responded, “Well, so is everybody else’s case that’s on the sign up sheet. We’re hearing uncontested cases.” and went back to her hearing room. *Id* at 36. Judge Essrig claims that she typically tries to accommodate anyone who has a conflict in their schedule when they notify her Judicial Assistant or her Bailiff of their problem. She testified that the incident with Judge Holloway was “...the only time a judge has asked me, (to call a family member out of turn) and for that reason, I didn’t want it to look like I was doing favors for a judge’s relative...” *Id* at 48. Judge Essrig further stated, “...I didn’t feel comfortable doing that (calling Mr. Holloway out of turn) with other people around.” “... I didn’t want it to appear to people that I was pulling strings for one of my co-workers, and so I didn’t want to even discuss it (with Judge Holloway) any further.” *Id* at 55. As a courtesy, Judge Essrig asked her Bailiff to privately find out when Mr. Holloway’s fight departed in order to make sure she reached his case before he had to leave. *Id* at 37. Finally, Judge Essrig claims she

privately admonished Mr. Holloway and advised him “make his own reputation based on his abilities” and advised him not to try to get things accomplished by saying he was “so and so’s brother.” *Id* at 57.

Judge Holloway’s Motion for Summary Judgment alleges that her behavior was not an abuse of her judicial office because Judge Essrig did not react negatively to her request and agreed to call Mr. Holloway’s case next in line. This claim is in direct conflict with Judge Essrig’s deposition testimony. Judge Essrig absolutely felt uncomfortable with Judge Holloway’s request and the manner in which Judge Holloway spoke to her in open public. Judge Essrig specifically testified that she did not want to call Mr. Holloway out of turn to avoid the appearance of favoritism to another judge. Judge Holloway cites the *Frank* case for the proposition that “there was no evidence to suggest that Respondent had ‘some affirmative expectation’ or utilized her position ‘to accomplish that which otherwise would not have occurred.’” *See Frank* at 1240-1241. Judge Holloway’s statement to Judge Essrig in an “almost annoyed” tone of voice, “Can’t you take my brother out of turn... he has a plane to catch... they have worked the case out,” demonstrates precisely the use of her position to get her brother’s case called ahead of everyone else in the room. Once again, although arguably a slight transgression standing alone, when viewed in totality it is consistent with Judge Holloway’s pervasive use of her judicial position for the benefit of her family and friends.

## CONCLUSION



Judge Holloway's behavior demonstrates a pattern of conduct escalating in its seriousness. The tree injunction incident occurred on July 10, 1999; the Judge Essrig incident occurred on July 29, 1999; the call to Detective Yaratch occurred on February 24, 2000; the *ex parte* incident with Judge Stoddard occurred on March 3, 2000; and the false, misleading and incomplete deposition testimony took place July 19, 2000. Judge Holloway has demonstrated an overall lack of remorse and failure to willingly recognize her transgressions. We agree with the Supreme Court's position taken in *In re Graham*, 620 So.2d 1273 (Fla. 1993), "A judge who refuses to recognize (his) own transgressions does not deserve the authority to command the respect necessary to judge the transgressions of others. We are troubled by the fact that Graham shows no remorse and we can only presume that if this Court reprimanded him, he would continue to violate the precepts of the Code of Judicial Conduct."

Similarly, Judge Holloway has refused to fully accept or acknowledge responsibility for her transgressions and therefore we respectfully request this Honorable Commission deny Judge Holloway's Motion for Summary Judgment on all charges.

#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail on: Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, 500 Duval Street, Tallahassee, Florida 32399-1927; Scott K. Tozian, Esquire, SMITH &

TOZIAN, P.A., 109 North Brush Street, Suite 150, Tampa, Florida 33602; Michael S. Rywant, Esquire, RYWANT, ALVAREZ, JONES, RUSSO & GUYTON, P.A., 109 North Brush Street, Suite 500, Tampa, Florida 33602; John Beranek, Esquire, AUSLEY & MCMULLEN, Washington Square Building, 227 Calhoun Street, P.O. Box 391, Tallahassee, Florida 32302; Honorable James R. Jorgenson, Chair, Hearing Panel, Third District Court of Appeals, 2001 S.W. 117<sup>th</sup> Avenue, Miami, Florida 33175-1716; Honorable James R. Wolf, Chairman, Investigative Panel, 301 S. Martin Luther King Blvd., Tallahassee, Florida 32399; and Brooke Kennerly, Executive Director, Judicial Qualifications Commission, Mount Vernon Square, 1110 Thomasville Road, Tallahassee, Florida 32303, this \_\_\_\_\_ day of September, 2001.

**CERTIFICATE OF FONT SIZE**

I hereby certify that type font used in this document is 14-point Times New Roman.

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